

**REMARKS**

Reconsideration of the above-identified application in view of the foregoing amendments and following remarks is respectfully requested.

A. Claim Status / Explanation of Amendments

Claims 1-7 and 9 are pending and were rejected. As to the merits, claims 1, 4-5, 7, and 9 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Japanese Patent No. JP 2000-069356 A to Noriyuki ("Noriyuki"). [7/5/07 Office Action, p. 3]. Claims 2 and 6 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Noriyuki in view of U.S. Patent No. 7,030,911 B1 to Kubo ("Kubo"). [7/5/07 Office Action, p. 7]. Claim 3 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Noriyuki in view of U.S. Patent No. 6,654,062 B1 to Numata, et al. ("Numata"). [7/5/07 Office Action, p. 10].

By this paper, claims 1 and 7 are amended. Claim 1 has been amended to recite, *inter alia*, a determination device which "determines not to correct the exposure error in a case that at least one of the setting state of the image sensing apparatus, the operation state of the image sensing apparatus, and the object brightness state satisfies a predetermined condition, regardless of a magnitude of the exposure error calculated by said exposure correction calculation device." Similar and conforming amendments are made to claim 7 which discloses an image sensing method analogous to the image sensing apparatus of claim 1. Claim 7 is also amended to incorporate certain grammatical changes which have no bearing on patentability. Support for the changes to claims 1 and 7 can be found throughout the application as originally filed including, for example, Figs. 2-3 and accompanying descriptive text.

No new matter will be introduced into this application by entry of these amendments. Entry is respectfully requested.

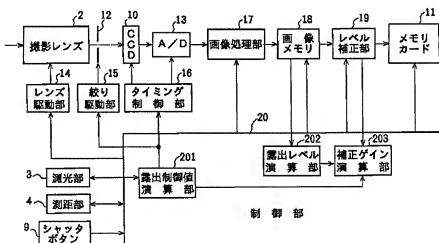
B. Claims 1, 4-5, 7, and 9 are Not Anticipated by Noriyuki

Applicant respectfully traverses the rejection of claims 1, 4-5, 7, and 9. Noriyuki does not teach, disclose, or suggest each and every element of Applicant's amended claim 1. In particular, Noriyuki fails to disclose a determination device which determines whether to perform an exposure correction regardless of the magnitude of an exposure error.

Applicant's claim 1, as amended, recites:

1. An image sensing apparatus comprising:
  - a setting state determination device which determines a setting state of the image sensing apparatus in image sensing;
  - an exposure calculation device which performs photometry for image sensing to calculate an exposure level upon an image sensing preparation instruction by an image sensing preparation instruction member;
  - an exposure level calculation device which calculates an exposure level of an image signal output after image sensing;
  - an exposure correction calculation device which calculates an exposure error value from the exposure level calculated by said exposure calculation device and the exposure level of a sensed image that is calculated by said exposure level calculation device;
  - a determination device which determines whether or not to correct the exposure error on the basis of at least one of the setting state of the image sensing apparatus that is obtained by said setting state determination device, an operation state of the image sensing apparatus, and an object brightness state in image sensing, wherein said determination device determines not to correct the exposure error in a case that at least one of the setting state of the image sensing apparatus, the operation state of the image sensing apparatus, and the object brightness state satisfies a predetermined condition, regardless of a magnitude of the exposure error calculated by said exposure correction calculation device; and
  - an exposure error correction device which performs an exposure correction by using the exposure error calculated by said exposure correction calculation device, when it is determined by said determination device to correct the exposure error.

Noriyuki is directed to an image pick-up device which carries out photoelectric conversion of an image signal. [Noriyuki, ¶0001]. In one aspect, as shown by Fig. 5 below, Noriyuki discloses a block diagram of a digital camera equipped with an image pick-up device capable of reducing errors due to differences between the proper exposure level and the exposure level of a photographed image. [Noriyuki, Abstract]. Noriyuki's image pick-up device is comprised of a level amendment section 19, control section 20, exposure control value operation part 201, exposure level operation part 202, and amendment gain operation part 203 [Noriyuki, ¶0034-0035] which the Office Action respectively equates with Applicant's exposure error correction device, setting state determination device, exposure calculation device, exposure level calculation device, and exposure correction calculation device as recited in pending claim 1. [7/5/07 Office Action, p. 3-5].



[Noriyuki, Fig. 5].

The Office Action then contends that Noriyuki's level amendment section 19 serves in the same capacity as Applicant's exposure error correction device, performing an exposure correction "by using the exposure error calculated by said exposure correction calculation device, when it is determined by said determination device to correct the exposure error" as recited in pending claim 1. [7/5/07 Office Action, p. 5]. Thus, as recognized and asserted by the Office

Action, Noriyuki's level amendment section 19 performs level amendment of the image data based on the amendment gain inputted from the control section 20. [7/5/07 Office Action, p. 5]. That is, Noriyuki performs exposure correction on the basis of the magnitude of the exposure error. [Noriyuki, ¶0033 and ¶0054].

Applicant, on the other hand, is directed to an image sensing apparatus which "determines not to correct the exposure error ... regardless of a magnitude of the exposure error calculated by said exposure correction calculation device" as recited in amended claim 1. Thus, in contrast to Noriyuki, Applicant's determination device determines whether to perform exposure correction irrespective of the magnitude of the exposure error.

Accordingly, Noriyuki fails to teach, disclose or suggest "a determination device which ... determines not to correct the exposure error in a case that at least one of the setting state ..., the operation state ..., and the object brightness state satisfies a predetermined condition, regardless of a magnitude of the exposure error calculated by said exposure correction calculation device" as recited in Applicant's amended claim 1. Applicant submits claim 1 is patentably distinct from Noriyuki for at least this reason. Claim 1 is directed to an image sensing apparatus whereas independent claim 7 discloses an image sensing method and, as such, claim 7 is also asserted to be patentably distinct for at least similar reasons. Since claims 4-5 and 9 depend either directly or indirectly from independent claims 1 and 7, respectively, they are all allowable for at least the same additional independent reasons as set forth for claim 1. Consequently, the Section 102 rejection of claims 1, 4-5, 7, and 9 should be withdrawn.

C. Claims 2-3 and 6 are Patentable over Noriyuki in view of the Cited References

Applicant respectfully traverses the rejection of claims 2-3 and 6 under 35 U.S.C. § 103(a) as allegedly being unpatentable for obviousness over Noriyuki in view of Kubo or

Numata. For at least similar reasons as stated above and for the secondary references failing to overcome the deficiencies of the primary reference, claims 2-3 and 6 are asserted to be patentably distinct. Accordingly, Applicant respectfully traverses the Section 103 rejection of claims 2-3 and 6 over Noriyuki in view of Kubo or Numata. It is respectfully submitted that all of the pending claims are now allowable for the above reasons and early, favorable action in that regard is respectfully requested.

Applicant has chosen in the interest of expediting prosecution of this patent application to distinguish the cited documents from the pending claims as set forth above. These statements should not be regarded in any way as admissions that the cited documents are, in fact, prior art. Furthermore, Applicant has not specifically addressed the rejections of the dependent claims. Applicant respectfully submits that the independent claims, from which they depend, are in condition for allowance as set forth above. Accordingly, the dependent claims also are in condition for allowance. Applicant, however, reserves the right to address such rejections of the dependent claims in the future as appropriate.

**CONCLUSION**

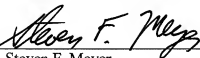
For the above-stated reasons, this application is respectfully asserted to be in condition for allowance. An early and favorable examination on the merits is earnestly solicited. In the event that a telephone conference would facilitate the examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY ADDITIONAL FEES WHICH MAY BE REQUIRED FOR THE TIMELY CONSIDERATION OF THIS AMENDMENT UNDER 37 C.F.R. §§ 1.16 AND 1.17, OR CREDIT ANY OVERPAYMENT TO DEPOSIT ACCOUNT NO. 13-4500, ORDER NO. 1232-5172.

Respectfully submitted,  
MORGAN & FINNEGAN, L.L.P.

Dated: August 31, 2007

By: \_\_\_\_\_

  
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